

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users “SAFETEA-LU”



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NEPA Delegation

Sections 6004 and 6005

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NEPA Delegation

- FHWA “assigns” to Caltrans responsibility and authority for compliance with NEPA and other federal environmental laws

Pilot Program Goals

- An experimental program for “pilot” states to demonstrate how they are able to *streamline the environmental process* for transportation projects ...
 - **while** *maintaining protection of environmental resources* without the added structure of FHWA review

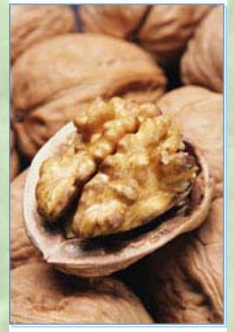
Pilot Program Goals, cont.

- Joint focus on delivery of needed transportation projects and environmental protection
- Program will expand to other states, if pilot is successful

Benefits to Resource Agencies

- Streamlines consultation process by
 - Allowing direct consultation between Caltrans and federal resource agencies
 - Reducing consultation parties from three to two, making consultation more efficient

Section 6004 in a Nutshell

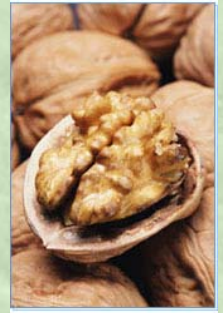


- State assumes authority and responsibility for determining specific types of Categorical Exclusions
- Available to all state transportation departments (DOTs)
- Requires MOU with FHWA
- Requires waiver of 11th Amendment right to sovereign immunity
- May include authority and responsibility for coordination/consultation with resource agencies

Section 6004, cont.

- Categorical Exclusions delegation MOU has maximum length of three years, but is renewable
- US DOT will monitor state's compliance with MOU and take state's performance into account when considering renewal
- US DOT may terminate delegation for cause

Section 6005 in a Nutshell



- Pilot program for 5 states: Alaska, California, Ohio, Oklahoma, Texas
- The pilot states are eligible to apply for delegation of US DOT's
 - NEPA responsibilities
 - Responsibilities under other federal environmental laws

Section 6005, cont.

- Caltrans must waive 11th Amendment right to sovereign immunity:

Caltrans, not FHWA, will defend cases involving NEPA and other federal environmental laws

Delegation Scope

- Limited to highway projects
- Broad flexibility, from specific projects to the state's entire federal aid highway program
- May include some or all of US DOT's consultation responsibilities under federal environmental laws (Section 7, Section 106)
- Scope will be determined through application to US DOT and execution of MOU

What's Excluded

- Air quality conformity
- Government to Government consultation with tribes
- US DOT responsibilities for statewide and metropolitan planning
- Projects requiring Federal Transit Administration funding or approval
- Projects crossing international borders

Application Process

- Application requirements will be identified in Rulemaking – now under way
- State applies for scope of responsibilities it would like to assume
- If coordination responsibilities with Resource Agencies are included, US DOT will solicit the views of the involved agencies before making a decision

The MOU

- State and US DOT will enter into an MOU once the state's application is accepted
- The MOU will:
 - formally identify the responsibilities being assumed
 - include performance measures to gauge the success of the program

Timeframe

- Duration of the pilot is six years from SAFETEA-LU enactment (August 2011)
- State may apply after:
 - the application rulemaking complete
 - the state has solicited public comment on application
- Once the application is accepted and sovereign immunity is waived, the state and US DOT enter into MOU

Preparing for NEPA Delegation

- What we are doing
 - FHWA Headquarters meetings with federal resource agencies in Washington DC
 - Caltrans examining need for changes in process and procedures
 - FHWA California Division examining its roles, responsibilities & structure for successful implementation
 - Conducting outreach to help others understand delegation

Pilot Program Checks & Balances

- Caltrans must comply with all statutes, FHWA NEPA regulations, policy and formal guidance
- Caltrans must meet specified performance measures: *includes relationships with resource agencies*
- Agencies and public will have opportunity to comment on Caltrans' formal application for delegation: *FHWA will formally invite resource agencies to provide views*

More Checks & Balances

- US DOT will audit program throughout pilot period:
 - twice yearly for the first two years; once a year thereafter
 - audit to be available to the public
- US DOT will submit annual reports to Congress
- A State's delegation may be terminated for cause

Next Steps

- Gather feedback on delegation of FHWA responsibilities to Caltrans
- Meet one-on-one with federal resource agencies
 - Listen and learn about your perspectives
 - Discuss how we can make delegation most effective

Questions & Answers



Thank You for Coming Today!

- A point of contact sheet is available at the sign-in table
- If you have any questions, please do not hesitate to contact any of the point of contacts